

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA RENEWABLE POWER PRODUCTION
5 AND RURAL ECONOMIC DEVELOPMENT ACT; REVISING THE DEFINITION OF "ELIGIBLE RENEWABLE
6 RESOURCE" TO INCLUDE EXISTING HYDROELECTRIC RESOURCES; REQUIRING A PUBLIC UTILITY TO
7 PROVIDE A REFUND TO CUSTOMERS FOR THE VALUE OF CERTAIN RENEWABLE ENERGY CREDITS;
8 AMENDING SECTIONS 69-3-2003, 69-3-2004, 69-3-2006, AND 90-4-1005, MCA; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 69-3-2003, MCA, is amended to read:

14 **"69-3-2003. Definitions.** As used in this part, unless the context requires otherwise, the following
15 definitions apply:

16 (1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric
17 power other than simple generation, transmission, or distribution. Ancillary services related to transmission
18 services include energy losses, energy imbalances, scheduling and dispatching, load following, system
19 protection, spinning reserves and nonspinning reserves, and reactive power.

20 (2) "Balancing authority" means a transmission system control operator who balances electricity supply
21 and load at all times to meet transmission system operating criteria and to provide reliable electric service to
22 customers.

23 (3) "Common ownership" means the same or substantially similar persons or entities that maintain a
24 controlling interest in more than one community renewable energy project even if the ownership shares differ
25 between two community renewable energy projects. Two community renewable energy projects may not be
26 considered to be under common ownership simply because the same entity provided debt or equity or both debt
27 and equity to both projects.

28 (4) "Community renewable energy project" means an eligible renewable resource that:

29 (a) is interconnected on the utility side of the meter in which local owners have a controlling interest and
30 that is less than or equal to 25 megawatts in total calculated nameplate capacity; or

1 (b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.

2 (5) (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that is
3 selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or
4 cooperative.

5 (b) The term does not include governmental entities selling electricity produced only by facilities
6 generating less than 250 kilowatts that were in operation prior to 1990.

7 (6) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting
8 in 2008, for which compliance with this part must be demonstrated.

9 (7) "Cooperative utility" means:

10 (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

11 (b) an existing municipal electric utility as of May 2, 1997.

12 (8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric
13 generating resource to rapidly start, stop, increase, or decrease electricity production from that generating
14 resource in order to respond to the balancing authority's need to match supply resources to loads on the
15 transmission system.

16 (9) "Electric generating resource" means any plant or equipment used to generate electricity by any
17 means.

18 (10) (a) "Eligible renewable resource" means a facility either located within Montana or delivering
19 electricity from another state into Montana that, except as provided in subsection (10)(b), commences commercial
20 operation after January 1, 2005, or a hydroelectric project expansion referred to in subsection (10)(d)(iii), any of
21 which and that produces electricity from one or more of the following sources:

22 ~~(a)~~(i) wind;

23 ~~(b)~~(ii) solar;

24 ~~(c)~~(iii) geothermal;

25 ~~(d)~~(iv) water power, in the case of a hydroelectric project that:

26 ~~(i)~~(A) does not require a new appropriation, diversion, or impoundment of water ~~and that has a nameplate~~
27 ~~rating of 10 megawatts or less; or~~ or

28 ~~(ii)~~(B) is installed at an existing reservoir or on an existing irrigation system that does not have
29 hydroelectric generation as of April 16, 2009; ~~and has a nameplate capacity of 15 megawatts or less; or~~

30 ~~_____ (iii) is an expansion of an existing hydroelectric project that commences construction and increases~~

1 ~~existing generation capacity on or after October 1, 2013. Engineering estimates of the average incremental~~
 2 ~~generation from the increase in existing generation capacity must be submitted to the commission for review. The~~
 3 ~~commission shall determine an average annual incremental generation that will constitute the eligible renewable~~
 4 ~~resource from the capacity expansion, subject to further revision by the commission in the event of significant~~
 5 ~~changes in stream flow or dam operation:~~

6 ~~(e)(v)~~ landfill or farm-based methane gas;

7 ~~(f)(vi)~~ gas produced during the treatment of wastewater;

8 ~~(g)(vii)~~ low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic
 9 fuels from wood, forest, or field residues, including wood pieces that have been treated with chemical
 10 preservatives, such as creosote, pentachlorophenol, or copper-chrome arsenic, and that are used at a facility that
 11 has a nameplate capacity of 5 megawatts or less;

12 ~~(h)(viii)~~ hydrogen derived from any of the sources in this subsection (10) for use in fuel cells; and

13 ~~(i)(ix)~~ the renewable energy fraction from:

14 ~~(i)(A)~~ the sources identified in this subsection (10) of electricity production from a multiple-fuel process
 15 with fossil fuels;

16 ~~(ii)(B)~~ flywheel storage as defined in 15-6-157(4)(d);

17 ~~(iii)(C)~~ hydroelectric pumped storage as defined in 15-6-157(4)(e);

18 ~~(iv)(D)~~ batteries; and

19 ~~(v)(E)~~ compressed air derived from any of the sources in this subsection (10) that is forced into an
 20 underground storage reservoir and later released, heated, and passed through a turbine generator.

21 (b) (i) Except as provided in subsection (10)(b)(ii), the term also includes electricity produced from an
 22 existing hydroelectric facility that commenced commercial operation in Montana before January 1, 2005.

23 (ii) The term does not include federal hydroelectric facilities located in Montana.

24 (11) "Local owners" means:

25 (a) Montana residents;

26 (b) general partnerships of which all partners are Montana residents;

27 (c) business entities organized under the laws of Montana that:

28 (i) have less than \$50 million of gross revenue;

29 (ii) have less than \$100 million of assets; and

30 (iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana

1 residents;

2 (d) Montana nonprofit organizations;

3 (e) Montana-based tribal councils;

4 (f) Montana political subdivisions or local governments;

5 (g) Montana-based cooperatives other than cooperative utilities; or

6 (h) any combination of the individuals or entities listed in subsections (11)(a) through (11)(g).

7 (12) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized
8 to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency
9 conditions, unforeseen load swings, and generation disruptions.

10 (13) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter
11 3, on January 1, 2005, including the public utility's successors or assignees.

12 (14) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity
13 generated by an eligible renewable resource that is tracked and verified by the commission and includes all of
14 the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

15 (15) "Renewable energy fraction" means the proportion of electricity output directly attributable to
16 electricity and associated renewable energy credits produced by one of the sources identified in subsection (10).

17 (16) "Seasonality" means the degree to which an electric generating resource is capable of producing
18 electricity in each of the seasons of the year.

19 (17) "Small customer" means a retail customer that has an individual load with an average monthly
20 demand of less than 5,000 kilowatts.

21 (18) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and
22 immediately responsive to frequency control and that is needed to maintain system frequency stability during
23 emergency conditions, unforeseen load swings, and generation disruptions.

24 (19) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the
25 community renewable energy project and other eligible renewable resources that are:

26 (a) located within 5 miles of the project;

27 (b) constructed within the same 12-month period; and

28 (c) under common ownership."
29

30 **Section 2.** Section 69-3-2004, MCA, is amended to read:

1 **"69-3-2004. Renewable resource standard -- administrative penalty -- waiver.** (1) Except as provided
2 in 69-3-2007 and subsections (11) through (14) of this section, a graduated renewable energy standard is
3 established for public utilities and competitive electricity suppliers as provided in subsections (2) through (4) of
4 this section.

5 (2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility
6 and competitive electricity supplier shall procure a minimum of 5% of its retail sales of electrical energy in
7 Montana from eligible renewable resources.

8 (3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public
9 utility and competitive electricity supplier, except as provided in subsections (13) and (14), shall procure a
10 minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

11 (b) Beginning January 1, 2012, as part of their compliance with subsection (3)(a), public utilities shall
12 purchase both the renewable energy credits and the electricity output from community renewable energy projects
13 that total at least 50 megawatts in nameplate capacity.

14 (c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on
15 each public utility's retail sales of electrical energy in Montana in the calendar year 2011.

16 (4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each
17 public utility and competitive electricity supplier, except as provided in subsections (13) and (14), shall procure
18 a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

19 (b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable
20 energy credits and the electricity output from community renewable energy projects that total at least 75
21 megawatts in nameplate capacity.

22 (ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under
23 subsection (3)(b).

24 (c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on
25 each public utility's proportion of the total retail sales of electrical energy by public utilities in Montana in the
26 calendar year 2014.

27 (5) (a) In complying with the standards required under subsections (2) through (4), a public utility or
28 competitive electricity supplier shall, for any given compliance year, calculate its procurement requirement based
29 on the public utility's or competitive electricity supplier's previous year's sales of electrical energy to retail
30 customers in Montana.

1 (b) The standards in subsections (2) through (4) must be calculated on a delivered-energy basis after
2 accounting for any line losses.

3 (6) A public utility or competitive electricity supplier has until 3 months following the end of each
4 compliance year to purchase renewable energy credits for that compliance year.

5 (7) (a) In order to meet the standards established in subsections (2) through (4), a public utility or
6 competitive electricity supplier may only use:

7 (i) electricity from an eligible renewable resource in which the associated renewable energy credits have
8 not been sold separately;

9 (ii) renewable energy credits created by an eligible renewable resource purchased separately from the
10 associated electricity; or

11 (iii) any combination of subsections (7)(a)(i) and (7)(a)(ii).

12 (b) A public utility or competitive electricity supplier may not resell renewable energy credits and count
13 those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the
14 standards established in subsections (2) through (4).

15 (c) Renewable energy credits sold through a voluntary service such as the one provided for in
16 69-8-210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the
17 standards established in subsections (2) through (4).

18 (d) Beginning January 1, 2017, unless a public utility is exempt from the standards established in
19 subsections (2) through (4) in accordance with subsection (13), a public utility shall credit customers with the
20 proceeds from the sale of all renewable energy credits that are attributable to a hydroelectric project and that are
21 not:

22 (i) used to meet the standards established in subsections (2) through (4); or

23 (ii) carried forward in accordance with subsection (9).

24 (e) Beginning January 1, 2017, if a public utility uses hydroelectric projects and the associated renewable
25 energy credits to meet the standards established in subsections (2) through (4) and sells renewable energy
26 credits that are attributable to a renewable energy project certified by the commission as an eligible renewable
27 resource, the public utility shall credit customers with the proceeds from the sale of those renewable energy
28 credits that are attributable to the renewable energy project and that are not:

29 (i) used to meet the standards established in subsections (2) through (4); or

30 (ii) carried forward in accordance with subsection (9).

1 (8) Nothing in this part limits a public utility or competitive electricity supplier from exceeding the
2 standards established in subsections (2) through (4).

3 (9) If a public utility or competitive electricity supplier exceeds a standard established in subsections (2)
4 through (4) in any compliance year, the public utility or competitive electricity supplier may carry forward the
5 amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent
6 compliance years. The carryforward may not be double-counted.

7 (10) Except as provided in subsections (11) and (12), if a public utility or competitive electricity supplier
8 is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public
9 utility or competitive electricity supplier shall pay an administrative penalty, assessed by the commission, of \$10
10 for each megawatt hour of renewable energy credits that the public utility or competitive electricity supplier failed
11 to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties
12 must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(b).

13 (11) A public utility or competitive electricity supplier may petition the commission for a short-term waiver
14 from full compliance with the standards in subsections (2) through (4) and the penalties levied under subsection
15 (10). The petition must demonstrate that the:

16 (a) public utility or competitive electricity supplier has undertaken all reasonable steps to procure
17 renewable energy credits under long-term contract, but full compliance cannot be achieved either because
18 renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the
19 public utility or competitive electricity supplier; or

20 (b) integration of additional eligible renewable resources into the electrical grid will clearly and
21 demonstrably jeopardize the reliability of the electrical system and that the public utility or competitive electricity
22 supplier has undertaken all reasonable steps to mitigate the reliability concerns.

23 (12) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions
24 of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections (2) through
25 (4).

26 (b) The exemption provided for in subsection (12)(a) is terminated upon modification after April 25, 2007,
27 of the prices, terms, or conditions in a written contract.

28 (13) A public utility that served 50 or fewer retail customers in Montana on December 31, 2012, is exempt
29 from the requirements of subsections (2) through (4).

30 (14) (a) A competitive electricity supplier with four or fewer small customers in Montana is exempt from

1 the requirements of subsections (2) through (4).

2 (b) For the purposes of determining the number of small customers served by a competitive electricity
3 supplier, an entity that purchases electricity for commercial or industrial use and does not resell electricity to
4 others is one small customer regardless of the number of its metered locations."

5

6 **Section 3.** Section 69-3-2006, MCA, is amended to read:

7 **"69-3-2006. Commission authority -- rulemaking authority.** (1) The commission has the authority to
8 generally implement and enforce the provisions of this part.

9 (2) The commission shall adopt rules before June 1, 2006, to:

- 10 (a) select a renewable energy credit tracking system to verify compliance with this part;
- 11 (b) establish a system by which renewable resources become certified as eligible renewable resources;
- 12 (c) define the process by which waivers from full compliance with this part may be granted;
- 13 (d) establish procedures under which contracts for eligible renewable resources and renewable energy
14 credits may receive advanced approval;
- 15 (e) define the requirements governing renewable energy procurement plans and annual reports; and
- 16 (f) generally implement and enforce the provisions of this part.
- 17 ~~(3) The commission may adopt rules to ensure that the calculation of energy generation and the~~
18 ~~renewable energy credits for eligible renewable resources under 69-3-2003(10)(d)(iii) reflects the actual electrical~~
19 ~~production from the expansion as typically reduced by seasonal water conditions."~~

20

21 **Section 4.** Section 90-4-1005, MCA, is amended to read:

22 **"90-4-1005. Energy development and demonstration grant program.** (1) There is an energy
23 development and demonstration grant program within the department of environmental quality to fund technology
24 development and demonstration:

25 (a) advancing the development and utilization of energy storage systems, including but not limited to
26 mediums, such as accumulators, fuel cells, and batteries, that store energy that may be drawn upon at a later
27 date for use;

28 (b) developing storage systems specifically designed to store energy generated from eligible renewable
29 resources ~~as defined listed in 69-3-2003~~ 69-3-2003(10)(a), including but not limited to compressed air energy
30 storage systems;

1 (c) promoting the efficiency, environmental performance, and cost-competitiveness of energy storage
2 systems beyond the current level of technology; and

3 (d) advancing the development of alternative energy systems as defined in 15-32-102.

4 (2) Entities that may be eligible for grants include but are not limited to units of the Montana university
5 system, agricultural research centers, or private entities or research centers.

6 (3) Money appropriated to the department of environmental quality for the purpose of the energy
7 development and demonstration grant program may be used by the department for providing individual grants
8 in amounts up to \$500,000 and for administrative costs of 1% of the grant award.

9 (4) The grant application may include:

10 (a) a project plan sufficient to allow a reasonable determination regarding the potential feasibility of
11 advancing energy storage or alternative energy systems;

12 (b) a business plan to allow a reasonable determination regarding the financial feasibility of the project;
13 and

14 (c) a reporting process to ensure progress toward project goals."
15

16 **NEW SECTION. Section 5. Notification to tribal governments.** The secretary of state shall send a
17 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
18 Chippewa tribe.

19
20 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.
21

22 **NEW SECTION. Section 7. Retroactive applicability.** [This act] applies retroactively, within the
23 meaning of 1-2-109, to the compliance year beginning January 1, 2017.
24

- END -